

ORIGINAL  
FILE

RECEIVED

JUL 17 1992

July 13, 1992

Federal Communications Commission  
Office of the Secretary

Mr. Alfred C. Sikes  
Chairman  
Federal Communications Commission  
1919 M Street, NW, Room 814  
Washington, DC 20554

Dear Mr. Sikes:

RE: PETITION TO USE RADIO FREQUENCY 530 kHz

I hereby apply for authorization to put into place a series of radio stations transmitting information to the traveling public, as outlined in the FEDERAL REGISTER Vol. 40, No. 117, Page 25601, FCC Docket 20509 Part 2, Paragraph 2. I hereby apply to use the 530 kHz frequency for this service, as specified in the FEDERAL REGISTER Vol. 40, No. 117, Page 25602 2.1 Paragraph 2, and footnote US221, which allows non-governmental travel radio stations at this frequency (see attached copy).

The equipment used in this system will be FCC ID I 8 M D H 1 A M. All conditions of FEDERAL REGISTER Vo. 40, No. 117, Page 25602, Paragraph 89.102 will be followed and adhered to.

Since this is Federal Law I see no reason for any problems; however I am required by Law to inform you that if there is a problem I must request that my rights under Public Law 96-481 10/21/1980 be recognized (see attached copy).

Sincerely,



John J. Tank (native citizen of the United States)

DBA: TRIPS AMERICA  
(Travel Radio Information Places and Services)  
P.O. Box 1403  
Santa Monica, CA 90406

cc: Commissioners 5 ✓  
Secretary 2  
Bureau 2  
Information Office 1

No. of Copies rec'd  
List A B C D E

0+1

TRIPS AMERICA  
PO BOX 1403  
SANTA MONICA, CA 90406

APPLICATION FOR AUTHORIZATION

LOCATION US 99 AT METTLER CA. 93313

FCC ID I 8 M D H 1 A M

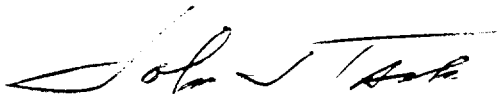
530 KC frequencyy

Based on First come First Serve

See att Supplementary statement.

bases FEDERAL REGISTER Vol. 40, No 117 Docket 20509 Part 2 Page 20509  
FEDERAL REGISTER Vol. 40 No 117 Par 2, and footnote US221 Page 25602

Sincerely,



JOHN J TANK  
PO BOX 1403  
SANTA MONICA, CA 90406

MAY 22 1992

TRIPS AMERICA

MACHINE # 805 858 2626 1003

TRAVEL RADIO INFORMATION PLACES AND SERVICES

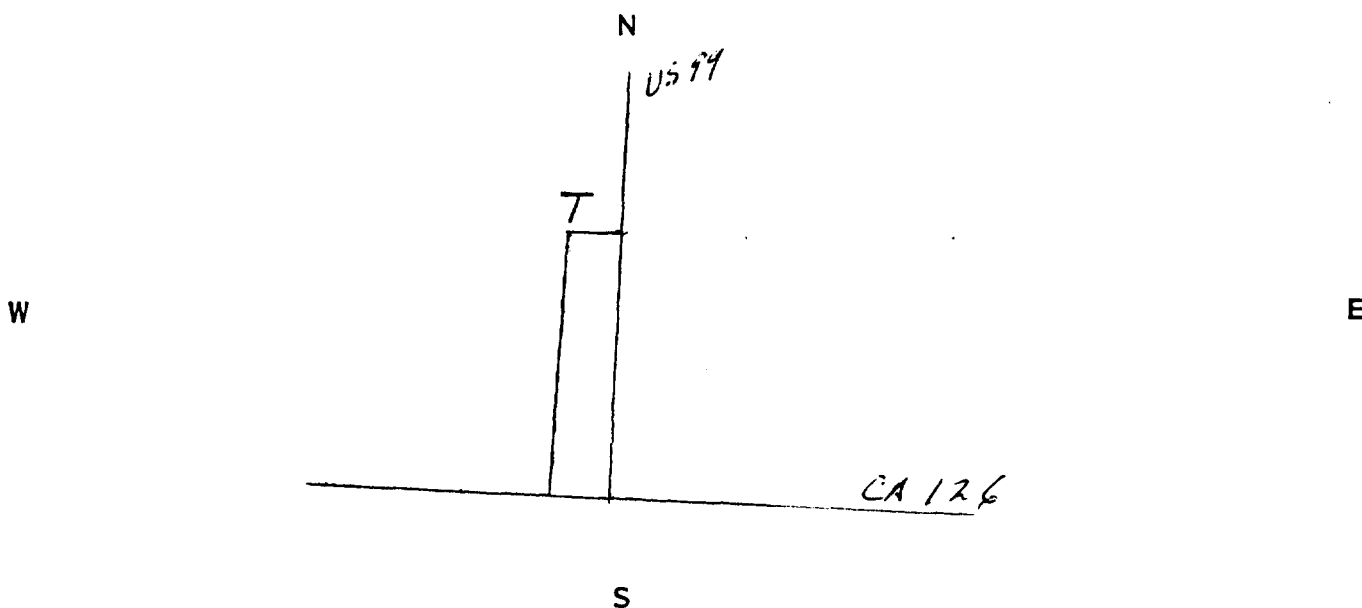
PO BOX 1403

SANTA MONICA, CA. 90406

Supplementary Statement: Federal Register vol 40 mo 117 page 25602 par 89.102 (3)

LOCATION Highway US 99 at METTLER State CA. 93313

Map i (a) is marked by T



(ii) a, the output power is 10 watts

b, vertical antenna is 22 feet tall and is 12 feet off the ground.

The distance from the transmitter to the antenna is 25 feet of coaxial cable.

The transmitter is 2000 ft above sea level.

5 FCC id I 8 M D H 1 A M

Date 5 22 1992

By Seb. J. J. J.

scribed; the transcript shall become part of the administrative record.

(8) In reconsidering the disallowance, the Administrator may request any additional information or documents necessary to his decision.

(9) New relevant evidence received into the record by the Administrator pursuant to paragraph (d) (8) which is not received from, or previously otherwise made available to, the State shall promptly be made available to the State for examination, inspection, and copying and the State will be given appropriate additional time for comment.

(10) All documents, reports, correspondence, and other materials considered by the Administrator in reaching his decision shall constitute the record of the reconsideration proceedings.

(11) After consideration of such record and the laws and regulations pertinent to the issues in question, the Administrator shall issue a written decision, based solely on the administrative record, which summarizes the facts and cites the regulations or statutes that support the decision. The decision shall constitute final administrative action on the matter and shall be promptly mailed to the head of the State agency.

(e) *Implementation of the decision.* If the decision requires an adjustment in the Federal share, either upward or downward, this will be reflected in subsequent grant awards.

[FR Doc.75-15705 Filed 6-16-75;8:45 am]

## DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 75-80-56]

### SOUTHERN REGION

#### Alteration of Transition Area

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Alabaster, Ala., transition area.

Interested persons may submit such written data, views or arguments as they desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Southern Region, Air Traffic Division, P.O. Box 20636, Atlanta, Ga. 30320. All communications received on or before July 17, 1975 will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, South-

ern Region, Room 645, 3400 Whipple Street, East Point, Ga.

The Alabaster transition area described in § 71.181 (40 F.R. 441) would be amended as follows: "... long. 86°-47'00" W.) \* \* \* would be deleted and "... long. 86°47'00" W.); within a 6.5-mile radius of Bessemer Airport (lat. 33°18'49" N., long. 86°55'29" W.); excluding that portion which coincides with the Birmingham transition area \* \* \* would be substituted therefor.

The proposed amendment is required to provide controlled airspace protection for IFR operations at Bessemer Airport. A prescribed instrument approach procedure to this airport, utilizing the Brookwood VORTAC, is proposed in conjunction with the alteration of the transition area. If the proposed alteration is acceptable, the airport operating authorization will be changed from VFR to IFR. (Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in East Point, Ga., on June 3, 1975.

PHILLIP M. SWATER,  
Director, Southern Region.

[FR Doc.75-15614 Filed 6-16-75;8:45 am]

## FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 2 and 89]

[Docket No. 20509; FCC 75-672]

### STATIONS IN LOCAL GOVERNMENT RADIO SERVICE

#### Transmission of Information to Traveling Public

In the matter of amendment of Parts 2 and 89 of the rules to provide for the use of frequencies 530, 1606, and 1612 kHz by stations in the Local Government Radio Service for the transmission of certain kinds of information to the traveling public.

1. Notice is hereby given of proposed rule amendment in the above captioned matter.

2. For some time the Commission, together with other Federal Government agencies, has been studying the need for and feasibility of using low power radio transmitters to communicate certain kinds of information to travelers. For example, radio might be used to alert motorists to road hazards, to inform them of available food, gasoline, or lodging, or to direct them to local points of interest. Also, Federal Government agencies have expressed a desire to use radio at parks and other national tourist areas to inform and advise travelers and to control traffic during emergencies such as forest fires. It appears that the use of radio can, in many situations, offer significant advantages over road signs or other methods now being used for these purposes.

3. To thoroughly examine this subject, a special *ad hoc* group was established consisting of representatives of the Commission and other Federal Government agencies. The group's recommendations form this basis for our proposals herein.

4. The Commission is proposing rules to establish a new category of station which will use transmitters of approximately 10 watts output on either of two frequencies just above or one frequency just below the AM broadcast band. The Commission is proposing the use of these frequencies since some limited studies indicate many standard AM broadcast receivers have the capability of tuning just past the band edges. Therefore, many of the owners of vehicles presently equipped with AM receivers could immediately utilize this service when it becomes available. Also, coaxial cable systems buried under roadways and heavily traveled areas such as pathways in parks will be authorized if they conform to the proposed rules and standards below.

5. Specifically, we are proposing to amend the rules to include provisions for a new class of station to be called "Travelers Information Station" to operate on 530 kHz, 1606 kHz and 1612 kHz. The 530 kHz frequency is presently a Federal Government only frequency; therefore, assignments to Travelers Information Stations on this frequency should not impact other Commission licensees. The 1606 kHz and 1612 kHz frequencies are in the band 1605-1715 kHz which is presently allocated to the Aeronautical Radionavigation, Fixed, Land Mobile, Maritime Mobile and Radiolocation Services. However, since the Travelers Information Stations will be secondary to stations of the primary services, no harmful interference may be caused to the primary services. The intent of this new class of station will be to serve the safety and convenience of travelers. Therefore, commercial advertising will not be allowed and eligibility for operation of such stations will be limited to entities presently eligible in the Local Government Radio Service, § 89.251 of the rules.

6. Transmitter output power will be limited to 10 watts, which should provide an effective coverage radius in the order of 1 mile. Only voice operation will be permitted, and the authorized bandwidth will be limited to 6 kHz. The technical parameters are explained in more detail below. The transmitters will be type accepted.

7. Authorizations for Travelers Information Stations will be made on three frequencies: 530 kHz, 1606 kHz and 1612 kHz. All assignments to Travelers Information Stations on these channels will be secondary to other services operating on these frequencies in accordance with the Table of Frequency Allocations. Because of the shared use of these frequencies by Government operations, the Commission will coordinate all applications with the Interdepartment Radio Advisory Committee.

8. In summary, the Commission believes the public interest and convenience will be served by allowing for the operation of the new class of station as described above. Therefore, we are proposing to amend Parts 2 and 89 of the

<sup>1</sup> Includes a limited amount of broadcast remote pickup operation on 1606 kHz.

Commission's rules in the manner set forth in the Appendix.

9. Authority for these amendments is contained in sections 4(1), 303(b), 303(c), 303(g), and 303(r) of the Communications Act of 1934, as amended. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested parties may file comments on or before August 18, 1975, and reply comments on or before September 5, 1975. All relevant and timely comments and reply comments will be considered by the Commission before a final decision is made in this proceeding. In reaching its decision, the Commission may take into account other relevant information before it, in addition to the specific comments invited by this notice. Response will be available for public inspection during regular business hours in the Commission's Broadcast and Docket Reference Room at its headquarters in Washington, D.C.

10. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 14 copies of all statements, briefs, or comments filed shall be furnished to the Commission.

Adopted: June 4, 1975.

Released: June 12, 1975.

FEDERAL COMMUNICATIONS  
COMMISSION.

VINCENT J. MULLINS,  
Secretary.

Parts 2 and 89 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

A. Part 2 is amended as follows:

(1) In § 2.1, a definition is added in alphabetical sequence to read as follows:

§ 2.1 Definitions.

*Travelers Information Station.* A base station in the Local Government Radio Service used to transmit noncommercial voice information, pertaining to traffic and road conditions, traffic hazard advisories, directions, availability of lodging, rest stops and service stations, official notices and related communications.

(2) In § 2.106, the Table of Frequency Allocations is amended in columns 7 through 11 for the bands 510-535 kHz and 1605-1715 kHz; footnote US14 is amended and a new footnote US221 is added, as follows:

§ 2.106 Table of Frequency Allocations.

Band (kHz)	Service	Class of station	Frequency (kHz)	Nature (OF SERVICE of station)
7	8	9	10	11
510-535 (US14) (US221)	...	...	530	Travelers information.
1605-1715 (US97) (US221)	...	...	1606 1612	Travelers information. Do.

US14: The frequency band 510-535 kHz is not available to non-Government stations except that the frequency 512 kHz is available for use by non-Government ship telegraph stations as a working frequency, and except for the provisions under US221. When 500 kHz is being used for distress purposes, ship and coast stations may use 512 kHz for calling.

US221: Government and non-Government Travelers Information Stations may be authorized on 530 kHz, 1606 kHz and 1612 kHz on a secondary basis to all other authorized stations operating on these or adjacent frequencies in accordance with the Table of Frequency Allocations.

B. Part 89 is amended as follows:

(1) Section 89.3 amended to include a new definition, to be inserted alphabetically as follows:

§ 89.3 Definitions.

(b) Definition of station:

*Travelers Information Station.* A base station in the local Government Radio Service used to transmit noncommercial voice information pertaining to traffic and road conditions, traffic hazard advisories, directions, availability of lodging, rest stops and service stations, and official notices and related communications.

(2) Section 89.102 headnote amended and paragraph (c) added to read as follows:

§ 89.102 Radio Call Box and Travelers Information Station operation.

(c) *Travelers Information Stations.*

(1) The frequencies indicated by footnote 14 in § 89.259(f) may be assigned in the Local Government Radio Service for the operation of Travelers Information Stations, subject to the following condition:

(1) Travelers Information Station authorizations will be issued for systems utilizing one or more base stations on a single frequency. Such authorizations will be issued on a secondary, non-interference basis to other authorized services operating on cochannel or adjacent channel frequencies and must tolerate such interference from those stations as may be necessary.

(2) Travelers Information Stations may transmit noncommercial messages and voice information pertaining to traffic and road conditions, traffic hazard ad-

visories, directions, availability of lodging, rest stops and service stations, and official notices and related communications provided that multiple sources of the service are identified, when possible.

(3) Each application for a station or system shall be accompanied by a supplementary statement containing the following information, as well as any other facts the applicant may deem pertinent:

(i) A map showing the following information:

(a) The location of the transmitter site of each station utilized in the system and the area of coverage of each transmitter;

(b) All highways, roads or other pathways of conveyance to be serviced by the system including parking areas, rest stops, campsites and similar areas.

(ii) For each transmitter site the following information shall be provided:

(a) The transmitter output power, and,

(b) The type of antenna utilized, its length (in the case of a coaxial cable system), height above ground, and distance from the transmitter, and the elevation above sea level at the transmitter site.

(4) The RF output power of any transmitter may not exceed 10 watts and shall be adjustable downward.

(5) Only the use of 6A3 emission will be authorized.

(6) Travelers Information Stations are not subject to the cochannel and adjacent channel mileage separation criteria of Section 89.15(b). The minimum cochannel system separation as measured from the closest edges of the respective systems' areas of coverage shall be 10 miles.

(7) Due consideration shall be given to AM broadcast stations on 540 kHz, 1590 kHz, and 1600 kHz to insure that interference to stations on these frequencies will not be caused.

(3) In § 89.259 the table in paragraph (f) is amended, and (g)(13) and (14) are added as follows:

§ 89.259 Frequencies available to the Local Government Radio Service.

(f) ...

Frequency or band (MHz)	Class of station(s)	Limitations
0.530	Base	12, 14
1.606	do	12, 14
1.612	do	12, 14

(g) ...

(13) This frequency is available for use only by Travelers Information Stations.

(14) A frequency tolerance of 100 Hz shall be maintained.

[FR Doc. 75-15561 Filed 6-16-75; 8:45 am]

## TITLE II—EQUAL ACCESS TO JUSTICE ACT

Equal Access to  
Justice Act.

5 USC 504 note.

SEC. 201. This title may be cited as the "Equal Access to Justice Act".

## FINDINGS AND PURPOSE

SEC. 202. (a) The Congress finds that certain individuals, partnerships, corporations, and labor and other organizations may be deterred from seeking review of, or defending against, unreasonable governmental action because of the expense involved in securing the vindication of their rights in civil actions and in administrative proceedings.

5 USC 504 note.

(b) The Congress further finds that because of the greater resources and expertise of the United States the standard for an award of fees against the United States should be different from the standard governing an award against a private litigant, in certain situations.

(c) It is the purpose of this title—

(1) to diminish the deterrent effect of seeking review of, or defending against, governmental action by providing in specified situations an award of attorney fees, expert witness fees, and other costs against the United States; and

(2) to insure the applicability in actions by or against the United States of the common law and statutory exceptions to the "American rule" respecting the award of attorney fees.

## AWARD OF FEES AND OTHER EXPENSES IN CERTAIN AGENCY ACTIONS

SEC. 203. (a)(1) Subchapter I of chapter 5 of title 5, United States Code, is amended by adding at the end thereof the following new section:

## "§ 504. Costs and fees of parties

5 USC 504.

"(a)(1) An agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency as a party to the proceeding was substantially justified or that special circumstances make an award unjust.

"(2) A party seeking an award of fees and other expenses shall, within thirty days of a final disposition in the adversary adjudication, submit to the agency an application which shows that the party is a prevailing party and is eligible to receive an award under this section, and the amount sought, including an itemized statement from any attorney, agent, or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the agency was not substantially justified.

Application for  
fees and  
expenses,  
submittal.

"(3) The adjudicative officer of the agency may reduce the amount to be awarded, or deny an award, to the extent that the party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy. The decision of the adjudicative officer of the agency under this section shall be made a part of the record containing the final decision of the agency and shall include written findings and conclusions and the reason or basis therefor.

"(b)(1) For the purposes of this section—

Definitions.

"(A) 'fees and other expenses' includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the agency to be necessary for the preparation of the party's case, and reasonable attorney or agent fees (The amount of fees awarded under this section shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the agency involved, and (ii) attorney or agent fees shall not be awarded in excess of \$75 per hour unless the agency determines by regulation that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys or agents for the proceedings involved, justifies a higher fee.);

5 USC 551.

"(B) 'party' means a party, as defined in section 551(3) of this title, which is an individual, partnership, corporation, association, or public or private organization other than an agency, but excludes (i) any individual whose net worth exceeded \$1,000,000 at the time the adversary adjudication was initiated, and any sole owner of an unincorporated business, or any partnership, corporation, association, or organization whose net worth exceeded \$5,000,000 at the time the adversary adjudication was initiated, except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of the Code and a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regardless of the net worth of such organization or cooperative association, and (ii) any sole owner of an unincorporated business, or any partnership, corporation, association, or organization, having more than 500 employees at the time the adversary adjudication was initiated;

26 USC 501.

"(C) 'adversary adjudication' means an adjudication under section 554 of this title in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license; and

5 USC 554.

"(D) 'adjudicative officer' means the deciding official, without regard to whether the official is designated as an administrative law judge, a hearing officer or examiner, or otherwise, who presided at the adversary adjudication.

"(2) Except as otherwise provided in paragraph (1), the definitions provided in section 551 of this title apply to this section.

Applications,  
uniform  
procedures.

"(c)(1) After consultation with the Chairman of the Administrative Conference of the United States, each agency shall by rule establish uniform procedures for the submission and consideration of applications for an award of fees and other expenses. If a court reviews the underlying decision of the adversary adjudication, an award for fees and other expenses may be made only pursuant to section 2412(d)(3) of title 28, United States Code.

Fee  
determination,  
review.

"(2) A party dissatisfied with the fee determination made under subsection (a) may petition for leave to appeal to the court of the United States having jurisdiction to review the merits of the underlying decision of the agency adversary adjudication. If the court denies the petition for leave to appeal, no appeal may be taken from the denial. If the court grants the petition, it may modify the determination only if it finds that the failure to make an award, or the calculation of the amount of the award, was an abuse of discretion.



"(d)(1) Fees and other expenses awarded under this section may be paid by any agency over which the party prevails from any funds made available to the agency, by appropriation or otherwise, for such purpose. If not paid by any agency, the fees and other expenses shall be paid in the same manner as the payment of final judgments is made pursuant to section 2414 of title 28, United States Code.

"(2) There is authorized to be appropriated to each agency for each of the fiscal years 1982, 1983, and 1984, such sums as may be necessary to pay fees and other expenses awarded under this section in such fiscal years.

Appropriation  
authorization.

"(e) The Chairman of the Administrative Conference of the United States, after consultation with the Chief Counsel for Advocacy of the Small Business Administration, shall report annually to the Congress on the amount of fees and other expenses awarded during the preceding fiscal year pursuant to this section. The report shall describe the number, nature, and amount of the awards, the claims involved in the controversy, and any other relevant information which may aid the Congress in evaluating the scope and impact of such awards. Each agency shall provide the Chairman with such information as is necessary for the Chairman to comply with the requirements of this subsection."

Report to  
Congress.

(2) The table of sections of subchapter I of chapter 5 of title 5, United States Code, is amended by adding at the end thereof the following new item:

"504. Costs and fees of parties."

(b) Section 202 of the Act entitled "An Act to amend the Small Business Act and Small Business Investment Act of 1958 to provide additional assistance under such Acts, to create a pollution control financing program for small business, and for other purposes" approved June 4, 1976 (15 U.S.C. 634b), is amended—

(1) by striking out "and" after the semicolon in paragraph (9);

(2) by striking out the period at the end of paragraph (10) and inserting in lieu thereof a semicolon and "and"; and

(3) by adding at the end thereof the following new paragraph:

"(11) advise, cooperate with, and consult with, the Chairman of the Administrative Conference of the United States with respect to section 504(e) of title 5 of the United States Code."

Ante, p. 2325.  
Repeal.  
5 USC 504.

(c) Effective October 1, 1984, section 504, and the item relating to section 504 in the table of sections, of title 5, United States Code, as added by subsection (a) of this section, are repealed, except that the provisions of such section shall continue to apply through final disposition of any adversary adjudication as defined in subsection (b)(1)(C) of such section, initiated before the date of repeal.

#### AWARD OF FEES AND OTHER EXPENSES IN CERTAIN JUDICIAL PROCEEDINGS

SEC. 204. (a) Section 2412 of title 28, United States Code, is amended to read as follows:

##### "§ 2412. Costs and fees

"(a) Except as otherwise specifically provided by statute, a judgment for costs, as enumerated in section 1920 of this title, but not including the fees and expenses of attorneys, may be awarded to the prevailing party in any civil action brought by or against the United States or any agency and any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. A judgment for costs when taxed against the United States

28 USC 1920.



shall, in an amount established by statute, court rule, or order, be limited to reimbursing in whole or in part the prevailing party for the costs incurred by such party in the litigation.

"(b) Unless expressly prohibited by statute, a court may award reasonable fees and expenses of attorneys, in addition to the costs which may be awarded pursuant to subsection (a), to the prevailing party in any civil action brought by or against the United States or any agency and any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. The United States shall be liable for such fees and expenses to the same extent that any other party would be liable under the common law or under the terms of any statute which specifically provides for such an award.

Judgment  
payments.

28 USC 2414,  
2517.

"(c)(1) Any judgment against the United States or any agency and any official of the United States acting in his or her official capacity for costs pursuant to subsection (a) shall be paid as provided in sections 2414 and 2517 of this title and shall be in addition to any relief provided in the judgment.

"(2) Any judgment against the United States or any agency and any official of the United States acting in his or her official capacity for fees and expenses of attorneys pursuant to subsection (b) shall be paid as provided in sections 2414 and 2517 of this title, except that if the basis for the award is a finding that the United States acted in bad faith, then the award shall be paid by any agency found to have acted in bad faith and shall be in addition to any relief provided in the judgment.

"(d)(1)(A) Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort) brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

Fee and expense  
applications,  
submittal.

"(B) A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this subsection, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the United States was not substantially justified.

Awards,  
reduction or  
denial.

"(C) The court, in its discretion, may reduce the amount to be awarded pursuant to this subsection, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.

Definitions.

"(2) For the purposes of this subsection—

"(A) 'fees and other expenses' includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees (The amount of fees awarded under this subsection shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) no expert witness shall be compensated at a rate in excess of the

highest rate of compensation for expert witnesses paid by the United States; and (ii) attorney fees shall not be awarded in excess of \$75 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.);

"(B) 'party' means (i) an individual whose net worth did not exceed \$1,000,000 at the time the civil action was filed, (ii) a sole owner of an unincorporated business, or a partnership, corporation, association, or organization whose net worth did not exceed \$5,000,000 at the time the civil action was filed, except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of the Code and a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regardless of the net worth of such organization or cooperative association, or (iii) a sole owner of an unincorporated business, or a partnership, corporation, association, or organization, having not more than 500 employees at the time the civil action was filed; and

"(C) 'United States' includes any agency and any official of the United States acting in his or her official capacity.

"(3) In awarding fees and other expenses under this subsection to a prevailing party in any action for judicial review of an adversary adjudication, as defined in subsection (b)(1)(C) of section 504 of title 5, United States Code, or an adversary adjudication subject to the Contract Disputes Act of 1978, the court shall include in that award fees and other expenses to the same extent authorized in subsection (a) of such section, unless the court finds that during such adversary adjudication the position of the United States was substantially justified, or that special circumstances make an award unjust.

"(4)(A) Fees and other expenses awarded under this subsection may be paid by any agency over which the party prevails from any funds made available to the agency, by appropriation or otherwise, for such purpose. If not paid by any agency, the fees and other expenses shall be paid in the same manner as the payment of final judgments is made in accordance with sections 2414 and 2517 of this title.

"(B) There is authorized to be appropriated to each agency for each of the fiscal years 1982, 1983, and 1984, such sums as may be necessary to pay fees and other expenses awarded pursuant to this subsection in such fiscal years.

"(5) The Director of the Administrative Office of the United States Courts shall include in the annual report prepared pursuant to section 604 of this title, the amount of fees and other expenses awarded during the preceding fiscal year pursuant to this subsection. The report shall describe the number, nature, and amount of the awards, the claims involved in the controversy, and any other relevant information which may aid the Congress in evaluating the scope and impact of such awards."

(b) The item relating to section 2412 in the table of sections for chapter 161 of title 28, United States Code, is amended to read as follows:

"2412. Costs and fees."

(c) Effective October 1, 1984, subsection (d) of section 2412, as added by subsection (a) of this section, is repealed, except that the provisions of that subsection shall continue to apply through final disposition of any action commenced before the date of repeal.

*Ante*, p. 2325.

41 USC 601 note.

28 USC 2414,  
2517.

Appropriation  
authorization.

Report to  
Congress.

28 USC 604.

28 USC 2412.

## TECHNICAL AND CONFORMING AMENDMENTS

Repeal.  
28 USC app.

SEC. 205. (a) Subdivision (f) of rule 37 of the Federal Rules of Civil Procedure is repealed.

(b) The table of rules of the Federal Rules of Civil Procedure is amended by deleting the item relating to subdivision (f) of rule 37.

26 USC 1.

(c) Section 722 of the Revised Statutes (42 U.S.C. 1988) is amended by striking out "or in any civil action or proceeding by or on behalf of the United States of America, to enforce, or charging a violation of a provision of the United States Internal Revenue Code,".

## EFFECT ON OTHER LAWS

28 USC 2412  
note.  
*Ante*, p. 2327.

SEC. 206. Nothing in section 2412(d) of title 28, United States Code, as added by section 204(a) of this title, alters, modifies, repeals, invalidates, or supersedes any other provision of Federal law which authorizes an award of such fees and other expenses to any party other than the United States that prevails in any civil action brought by or against the United States.

## LIMITATION

5 USC 504 note.

SEC. 207. The payment of judgments, fees and other expenses in the same manner as the payment of final judgments as provided in this Act is effective only to the extent and in such amounts as are provided in advance in appropriations Acts.

## EFFECTIVE DATE AND APPLICATION

5 USC 504 note.

*Ante*, p. 2325.

SEC. 208. This title and the amendments made by this title shall take effect of October 1, 1981, and shall apply to any adversary adjudication, as defined in section 504(b)(1)(C) of title 5, United States Code, and any civil action or adversary adjudication described in section 2412 of title 28, United States Code, which is pending on, or commenced on or after, such date.

TITLE III—SMALL BUSINESS EXPORT EXPANSION  
ASSISTANCE

Export  
promotion  
center,  
establishment.  
15 USC 649a.

SEC. 301. (a) The Secretary of Commerce, after consultation with the Administrator of the Small Business Administration, the President of the Export-Import Bank of the United States, the President of the Overseas Private Investment Corporation, and the Director of the Internal Revenue Service, shall establish an export promotion center in each of two district offices of the International Trade Administration of the Department of Commerce which are located in metropolitan areas where district offices of the Small Business Administration and the Internal Revenue Service exist.

Representatives,  
designation.

(b) The Export-Import Bank of the United States, the Internal Revenue Service, the Overseas Private Investment Corporation, the Department of Commerce, and the Small Business Administration shall each designate at least one full-time employee to serve as such agency's full-time representative in each such center. Each person designated shall be familiar with the needs and problems of small business exporting and shall serve without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51, and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates. Each export promotion center shall serve as a one-stop

5 USC 5101 *et*  
*seq.*  
5 USC 5331.